

## Message Text

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E.O. 11652: GDS

TAGS: ETRD, SZ

SUBJECT: ANTITRUST: FTC INVESTIGATION OF NESTLE/STOUFFER  
CASE

REF: STATE 012855

1. FEDERAL TRADE COMMISSION (FTC) ADVISES THAT THE  
NESTLE COMPANY, WHITE PLAINS, NEW YORK, WAS INFORMED  
MORNING JANUARY 20 BY LETTER AND TELEPHONE OF THE FTC  
COMPLAINT CHALLENGING THE STOUFFER ACQUISITION. NESTLE'S  
U.S. LEGAL COUNSEL WERE INFORMED AT SAME TIME.

2. FTC PLANS PRESS BRIEFING 2:00 PM JANUARY 21. FTC  
CONFIRMED TODAY ITS EARLIER COMMITMENT (PARA 6 REFTTEL) TO  
INCLUDE STATEMENT IN PRESS BRIEFING CONCERNING FAIR, NON-  
DISCRIMINATORY TREATMENT OF NESTLE.

3. FOR EMBASSY INFORMATION, FOLLOWING IS TEXT OF DRAFT  
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ANNOUNCEMENT FTC PLANS TO RELEASE AFTER 2:30 PM, EST,

TUESDAY, JANUARY 21, 1975, PROBABLY AT PRESS BRIEFING:

QUOTE: NESTLE CITED IN COMPLAINT. THE FEDERAL TRADE COMMISSION HAS, BY UNANIMOUS VOTE, ISSUED A COMPLAINT CHALLENGING THE ACQUISITION BY NESTLE ALIMENTANA S.A., THE WORLD'S SECOND LARGEST FOOD PROCESSOR, OF STOUFFER CORPORATION, A LEADING U.S. MANUFACTURER OF CERTAIN FROZEN

PREPARED FOODS. NESTLE'S PRINCIPAL OFFICES ARE IN VEVEY, SWITZERLAND, AND STOUFFER'S ARE IN SOLON, OHIO.

THE COMMISSION ALSO VOTED UNANIMOUSLY TO CLOSE ITS INVESTIGATION OF NESTLE'S EARLIER ACQUISITION OF ANOTHER U.S. FOOD PROCESSOR, LIBBY, MCNEILL & LIBBY.

NESTLE ACQUIRED STOUFFER ON MARCH 5, 1973, FOR APPROXIMATELY 105 MILLION DOLLARS CASH FROM LITTON INDUSTRIES, INC. THE COMPLAINT ALLEGES THAT THE EFFECT OF THE ACQUISITION HAS BEEN OR MAY BE SUBSTANTIALLY TO LESSEN COMPETITION OR TO TEND TO CREATE A MONOPOLY IN THE MANUFACTURE, DISTRIBUTION AND SALE OF FROZEN ENTREES AND QUALITY FROZEN ENTREES. FROZEN ENTREES ARE DEFINED AS FROZEN PREPARED FOODS WHICH ARE USUALLY SERVED AS THE MAIN DISH OF THE PRINCIPAL MEAL OF THE DAY. QUALITY FROZEN ENTREES ARE DEFINED AS THOSE ENTREES WHICH ARE ADVERTISED AND MARKETING AS QUALITY OR SUPERIOR FOOD PRODUCTS AND WHICH ARE GENERALLY ABLE TO COMMAND HIGHER THAN AVERAGE PER-OUNCE RETAIL PRICES.

THE COMPLAINT ALLEGES THAT AS A RESULT OF THE ACQUISITION:

-- NESTLE HAS BEEN ELIMINATED AS A POTENTIAL COMPETITOR IN BOTH MARKETS.

-- STOUFFER'S DOMINANT POSITION IN THE QUALITY FROZEN ENTREE MARKET HAS BEEN, OR MAY BE, FURTHER STRENGTHENED AND ITS DOMINANCE HAS BEEN, OR MAY BE, FURTHER ENTRENCHED.

-- BARRIERS TO ENTRY IN BOTH MARKETS, ALREADY HIGH, HAVE BEEN OR MAY BE FURTHER RAISED.  
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-- FORBEARANCE OF COMPETITION IN THE FROZEN ENTREE MARKET AS WELL AS IN THE FOOD INDUSTRY GENERALLY HAS RESULTED OR MAY RESULT OR HAS BEEN OR MAY BE INCREASED.

QUOTE: NOTE: THE FTC ISSUES A COMPLAINT WHEN IT HAS "REASON TO BELIEVE" THAT THE LAW HAS BEEN VIOLATED AND THAT A PROCEEDING IS IN THE PUBLIC INTEREST. SUCH ACTION

SIMPLY MARKS THE BEGINNING OF A FORMAL PROCEEDING IN WHICH THE ALLEGATIONS WILL BE RULED UPON AFTER A PUBLIC HEARING.

QUOTE: THE NOTICE OF CONTEMPLATED RELIEF PROVIDES FOR (1) DIVESTITURE OF STOUFFER BY SALE OR SPIN-OFF, AND (2) A 10-YEAR BAN AGAINST ACQUISITIONS BY NESTLE IN THE FROZEN PREPARED FOODS INDUSTRY WITHOUT PRIOR COMMISSION APPROVAL.

QUOTE: ACCORDING TO THE COMPLAINT, NESTLE HAS FOOD PLANTS IN APPROXIMATELY 70 COUNTRIES WITH CLOSE TO 90,000 EMPLOYEES. IN 1973 NESTLE, WORLDWIDE SALES WERE APPROXIMATELY 5.5 BILLION DOLLARS AND ITS PROFITS WERE ABOUT 230.7 MILLION DOLLARS. IT RANKED 12TH ON FORTUNE MAGAZINE'S LIST OF THE 300 LARGEST FOREIGN COMPANIES FOR 1972.

STOUFFER, THE COMPLAINT CONTINUES, IS THE LEADING FIRM IN THE QUALITY FROZEN ENTREE MARKET AND THE SECOND-RANKING FACTOR IN THE FROZEN ENTREE MARKET. BOTH MARKETS HAVE FOUR-FIRM CONCENTRATION IN EXCESS OF 50 PERCENT, HIGH PRODUCT DIFFERENTIATION, AND HIGH BARRIERS TO ENTRY.

THE COMPLAINT SAYS THAT IN THE FOOD INDUSTRY GENERALLY SINCE WORLD WAR II, THERE HAVE BEEN TRENDS TOWARD MARKET CONCENTRATION AND DOMINANCE BY LARGE, MULTI-PRODUCT COMPANIES WITH VAST FINANCIAL RESOURCES ACCOMPANIED BY DECLINING TRENDS IN THE NUMBER OF COMPETITORS. TRENDS TOWARD CONCENTRATION ARE ALSO APPARENT IN THE FROZEN ENTREE MARKET. THIS MARKET HAS BEEN TRANSFORMED FROM ONE COMPOSED LARGELY OF INDEPENDENT, MEDIUM-SIZE COMPANIES TO ONE DOMINATED BY A SMALL NUMBER OF MULTI-CONFIDENTIAL

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PRODUCT COMPANIES OF LARGE ABSOLUTE SIZE WHICH ENTERED THE MARKET BY ACQUISITION.

NESTLE HAS 30 DAYS IN WHICH TO FILE ANSWER TO THE COMPLAINT. UNQUOTE

4. DEPARTMENT WILL CABLE WHEN FTC ANNOUNCEMENT HAS BEEN MADE AND EMBASSY FREE TO USE INFORMATION CONTAINED THIS TELEGRAM AND REFTEL. KISSINGER

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